IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8374 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARSHOADBHAI K CHAUDHARY

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Surat passed an order on August, 31, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner, Harshadbhai K. Chaudhary, under the

provisions of the said Act.

2. The grounds of detention indicate that the detaining authority took into consideration 12 offences registered against the detenu. The authority also considered statements of two witnesses in respect of whom the detaining authority claimed privilege of not disclosing the identity of the witnesses by exercise powers under Section 9(2) of the PASA Act. The authority recorded a satisfaction about the genuineness of the fear expressed by the witnesses qua the detenu and claimed privilege. After considering the possibility of resorting to less drastic remedy, the detaining authority came to conclusion that detention under PASA is the only efficacious remedy that can be resorted to in order to immediately prevent the petitioner from pursuing his activities.

3. The petitioner/detenu challenges the order of detention on various counts. However, Ms. Pahwa has restricted her arguments to the ground of improper exercise of powers under Section 9(2) of the PASA Act. She submitted that the statements have not been verified by the detaining authority and, therefore, the satisfaction recorded by the detaining authority about the genuineness of the fear expressed by the witnesses and about the need for exercise of powers under Section 9(2) cannot be considered as genuine. The order of detention, therefore, would stand vitiated and the petition may, therefore, be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He, however, could not deny the fact that the statements of witnesses, whose identity has not been disclosed, have, in fact, not been verified by the detaining authority herself. But he submitted that the detaining authority has relied on the verification made by Dy.S.P. and, therefore, the petition may be allowed.

5. Having regard to the rival side contentions, at the outset, it may be noted that, there is no dispute about the fact that the detaining authority has herself not verified the statements and, as such, there is no question of the detaining being personally satisfied about the genuineness of the fear expressed by the witnesses qua the petitioner. The language employed in the grounds of detention indicate that verification by Dy.S.P. was not at the behest of or upon the direction of the District Magistrate and, therefore, the District Magistrate/the detaining authority has only considered

the verification of the statements by the Dy.S.P., which was placed before her. As such, the detaining authority had no material for arriving at an independent subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act. The detaining authority has not filed any affidavit in reply and, therefore also, this Court is at loss to appreciate how a subjective satisfaction is recorded by the detaining authority in absence of personal verification and in absence of verification through some responsible officer at the behest of the detaining authority. There appears not any independent report from Dy.S.P. about genuineness of the fear expressed and the verification, if read, indicates only verification of the fear expressed by the witnesses in the main statements. Under these circumstances, the subjective satisfaction indicated by the detaining authority for exercising powers under Section 9(2) of the PASA Act is vitiated. This will have an adverse bearing on the right of the detenu of making an effective representation as envisaged under Article 22(5) of the Constitution. The detenu's right of making an effective representation having been infringed thereby, the detention would stand vitiated. This makes the petition allowable.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated 31st August, 1999, passed against the detenu is hereby quashed. The detenu-Harshadbhai K. Chaudhary is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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